

REMARKS

Applicants appreciate the thorough and detailed examination of the present application as evidenced by the Office Action. Claims 22-24, 26-28 and 34-39 are currently pending. Claim 22 is amended herein to recite that the ratio of elongation at break in the cross direction to the elongation at break in the machine direction is at least 8, rather than at least 800%, as required by the Office Action. As this amendment merely clarifies the recitation, Applicants submit that this amendment does not narrow the claim and does not introduce new matter. Claim 24 is canceled herein without prejudice. Applicants respectfully request reconsideration of this application in view of these amendments and the following remarks.

Claims 22-24 and 34-39 Are Patentable Over Suzuki

Claims 22-24 and 34-39 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated, or in the alternative, under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 5,814,569 to Suzuki et al. ("Suzuki"). *Office Action*, page 2. The Office Action alleges that Suzuki discloses nonwoven fabrics comprising polypropylene conjugate continuous filaments, which are subjected to heating and drawing in order to form elastic nonwovens. *Id.* at pages 2-3. The Office Action acknowledges that Suzuki does not disclose the claimed property of at least 60% recovery from 150% elongation or the claimed strain rate. *Id.* However, the Office Action alleges that it is reasonable to presume that the material of Suzuki would have the claimed property of at least 60% recovery from a 150% elongation because the fabric of Suzuki allegedly: comprises polypropylene fibers, has the claimed ratio of elongation at break in the CD to the elongation at break in the MD, has the claimed recovery from 100% elongation, and is subjected to drawing at the claimed temperatures and claimed drawing rate. *Id.*

At the outset, Applicants note that Suzuki is not directed to an elastic thermally bonded nonwoven web consisting essentially of polypropylene fibers. Suzuki is directed to nonwoven fabric comprising concentric sheath-core conjugate filaments, whereby the core component is a

polyester and the sheath component is composed of a polyolefin. *Suzuki*, Abstract. As such, the nonwoven fabric of Suzuki does not consist essentially of polypropylene fibers. Suzuki clearly describes the polyester core as being important to the basic and novel characteristics of the nonwoven web. Applicants particularly direct the Examiner to Comparative Example 2 in Suzuki, in which Suzuki's drawing process is performed with polypropylene fibers, such that no polyester core is present. *Suzuki*, cols. 18-19. The resulting nonwoven fabric is described to be "inferior in both elasticity and the percentage of elastic recovery." *Suzuki*, col. 19, lines 8-9. In fact, Table 2 lists that for Suzuki's nonwoven fabric formed from polypropylene fibers, the ratio of the elongation in the cross direction to the ratio of the elongation in the machine direction is 1.3, thus clearly below the ratio of 8 that is recited in the pending claims. As such, Suzuki itself evidences that its processes do not form nonwoven webs that have the recited properties when they consist essentially of polypropylene fibers.

Applicants additionally submit that even if the polyester core were considered part of the polypropylene fibers, which is not the case for the pending claims because they recite that the nonwoven webs "consist essentially of" polypropylene fibers, the nonwoven webs of Suzuki would still not anticipate or render the pending claims obvious. As the Examiner acknowledges, Suzuki does not disclose the claimed property of at least 60% recovery from 150% elongation or the claimed strain rate. Applicants submit that the Examiner has no basis for presuming that Suzuki's fabrics are identical or substantially identical to the nonwoven webs recited in the pending claims because Suzuki does not describe that its fabrics are treated at a strain rate within a range of from 1000 to 2400 %/min. As Applicants have shown in the present application, the strain rate affects the elasticity of the nonwoven material, thus evidencing a structural difference in the treated nonwoven fabric. Furthermore, there is no reason to presume that the properties recited in the pending claims would inherently be present in Suzuki's fabrics. Applicants are not aware of any data that shows a general correlation between elastic recoveries from different elongations for polypropylene or any other material. As such, there is no scientific basis for assuming that the same material will have an elastic recovery of greater than 60% from a 150%

elongation merely because a material has an elastic recovery of more than 80% from a 100% elongation. Therefore, Applicants believe the Examiner's shifting of the onerous burden of proving that the recited nonwoven fabrics are different than those recited in Suzuki to the Applicants is improper.

For at least the foregoing reasons, Applicants respectfully request that the present rejection be withdrawn.

Claims 26-28 Are Patentable Over Suzuki In View of Morman

Claims 26-28 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Suzuki in view of U.S. Patent Application Publication No. 2003/0100238 to Morman et al. ("Morman"). *Office Action*, page 5. The Office Action alleges that Suzuki discloses the recited elastic fabric but does not disclose laminating the nonwoven to additional layers. *Id.* However, the Office Action alleges that Morman teaches that elastic nonwoven fabrics can be bonded to extensible or elastomeric films to provide laminates and so it would have been obvious to one of ordinary skill in the art at the time the invention was made to have bonded the fabric of Suzuki to a film as taught by Morman, in order to form a laminate having the additional properties of the film in combination with the nonwoven, such as improved strength, water barrier, properties, etc. *Id.*

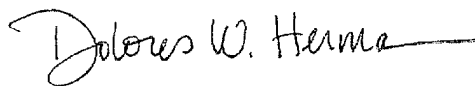
For at least the reasons described above with respect to Claim 22, from which Claims 26-28 depend, Applicants submit that Claims 26-28 are not anticipated by or obvious in view of Suzuki. As Morman is only cited for describing laminate formation, Morman does not remedy the deficiencies of Suzuki. Therefore, Applicants respectfully request that the present rejection be withdrawn.

CONCLUSION

Having addressed all of the issues raised by the Examiner in the pending Office Action, Applicants believe that the claims as presented herein are in condition for allowance, which action is respectfully requested. The Examiner is invited and encouraged to contact the undersigned directly in order to expedite the prosecution of the pending claims to issue.

No fee is believed to be due with this response. However, the Commissioner is authorized to charge any deficiency associated with this filing or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,



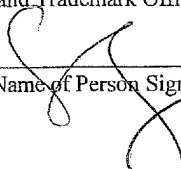
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